

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN THE TRICOR INDIRECT PURCHASER
ANTITRUST LITIGATION

C.A. No. 05-360 (KAJ)
(Consolidated)

THIS DOCUMENT RELATES TO:
PAINTERS= DISTRICT COUNSEL NO. 30
HEALTH AND WELFARE FUND and
RICHARD G. WILDE, C.A. No. 05-360 (KAJ)

VISTA HEALTH PLAN, INC. and
ROSS LOVE, C.A. No. 05-365 (KAJ)

PENNSYLVANIA EMPLOYEES BENEFIT
TRUST FUND, C.A. No. 05-390 (KAJ)

ALLIED SERVICES DIVISION WELFARE
FUND and HECTOR VALDES,
C.A. No. 05-394 (KAJ)

DIANA KIM, C.A. No. 05-426 (KAJ)

ELAINE M. PULLMAN, NEIL
PERLMUTTER, HELENA PERLMUTTER
and LULA RAMSEY, C.A. No. 05-450 (KAJ)

PHILADELPHIA FEDERATION OF
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LOCAL 28 SHEET METAL WORKERS,
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NOTICE OF SUBPOENA DUCES TECUM

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PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, on August 24, 2006 the attached Subpoena Duces Tecum for Production of Documents issued by the United States District Court of the Eastern District of Missouri was served upon EXPRESS

SCRIPTS, INC., 13900 Riverport Drive, Maryland Heights, MO, 63043 at c/o 190 Carondelet Plaza, Suite 600, St. Louis, MO, 63105 commanding it to produce for inspection and copying on September 13, 2006 the documents identified in Schedule A thereto.

Dated: August 25, 2006

CHIMICLES & TIKELLIS LLP

A handwritten signature in black ink, appearing to read 'P. Tikellis', is written over a horizontal line.

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AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
United States District Court
 EASTERN DISTRICT OF MISSOURI

IN RE TRICOR INDIRECT PURCHASER
 ANTITRUST LITIGATION

SUBPOENA IN A CIVIL CASE

THIS DOCUMENT RELATES TO

Case Nos. C.A. No. 05-360 (KAJ);

C.A. No. 05-365 (KAJ); C.A. No. 05-390 (KAJ);

CASE NUMBER: ¹Master File C.A. No. 05-360 (KAJ)
 (Consolidated)

C.A. No. 05-394 (KAJ); C.A. No. 05-450 (KAJ)

C.A. No. 05-467 (KAJ); C.A. No. 05-475 (KAJ);

C.A. No. 05-695 (KAJ)

(Pending in the U.S. District Court District of Delaware)

TO: **EXPRESS SCRIPTS, Inc.**
 13900 Riverport Drive
 Maryland Heights, MO 63043

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Exhibit A attached hereto**

PLACE **Husch & Eppenger, LLC**
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

DATE AND TIME **September 13, 2006 at 10:00 a.m.**

☐ YOU ARE COMMANDED to produce and permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if attorney for Plaintiff or Defendant)

Date: **August 24, 2006**

Issuing Officer's Name, Address, and Phone Number

A. Zachary Naylor, Chmicles and Tikellis, P.O. Box 1035, One Rodney Square, Wilmington, DE 19899 (302) 656-2500 Attorney for Plaintiff

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45 Federal Rules of Civil Procedure, Parts C & D**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person

may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

**SUBPOENA DUCES TECUM FOR PRODUCTION OF
DOCUMENTS FROM EXPRESS SCRIPTS, INC.**

I. Definitions

1. "Express Scripts" includes the corporation itself and all of its directors, officers, employees, agents, sales people and representatives, or anyone else acting on its behalf, including independent contractors and consultants; it also includes its predecessors, successors, its parents, subsidiaries, divisions, groups and affiliates, whether merged, consolidated, acquired or otherwise, whether wholly-owned or not, and their respective directors, officers, employees, agents, and salespeople, and any representatives, predecessors, and successor of each.

2. "Defendants" means Abbott Laboratories, Fournier Industries et Sante, and Laboratories Fournier, S.A. and includes the corporations themselves and all of their directors, officers, employees, agents, and salespeople, and any representatives, their predecessors, and successors and assigns; and their parents, subsidiaries, divisions, groups and affiliates, whether merged, consolidated, acquired or otherwise, whether wholly-owned or not, and their respective directors, officers, employees, agents, and salespeople, and any representatives, predecessors, and successor of each.

3. The term "TriCor" as used herein refers to the brand name prescription drug TriCor®, containing the active pharmaceutical ingredient fenofibrate.

4. The term "generic TriCor" as used herein refers to any drug product which is the bioequivalent of the brand name prescription drug TriCor.

5. "Document" means anything which may be considered to be a document or tangible thing within the meaning of Rule 34 of the Federal Rules of Civil Procedure and Rule 1001 of the Federal Rules of Evidence, and includes but is not limited to:

- (a) all written, printed, recorded, graphic or sound reproductions, however produced, including but not limited to correspondence, telegrams, teletype

messages, contracts, memoranda, notes, reports, notebooks, diaries, calendars, transcripts and recordings of conversations and telephone calls charts, photographs, agenda, ledgers, financial statements, receipts, electronic mail, Internet mail and all other records of any kind;

- (b) all computer-readable data compilations, including but not limited to tapes, diskettes, cards, cassettes and all other electronic or mechanical devices which contain information, together with all source codes or other data necessary to make the data compilation reasonably useable by plaintiffs;
- (c) all originals, drafts and copies that differ in any respect from the original, all marginal comments that appear on such documents, and all transcripts or recordings of such documents; and
- (d) all attachments, enclosures, or documents affixed or referred to in such documents.

6. "Communication" means the transmission of information orally, in writing, electronically, or in some other form. The phrase "documents relating to any communication" includes letters, memoranda, notes, long distance telephone bills, and telephone call messages.

7. "Agreement" means any contract, arrangement, or other type of understanding, formal or informal, oral or written, direct or indirect, tacit or express, between two or more persons.

II. Instructions

1. Unless otherwise specifically stated herein, the period covered by these document requests (the "relevant period") is from January 1, 1998 to the date of your production.

2. All documents produced shall be originals unless otherwise indicated. If your "original" is a photocopy or other copy, the copy should be produced as the original. Any photocopy or other copy of any original document which is not an exact duplicate of the original, or contains any markings whatsoever (e.g., notes, marks, marginalia, stamps, highlighting, blind copy receipts) that are not contained on the original, also shall be produced.

3. Documents produced in response to these document requests shall be complete and, unless privileged, unredacted. Documents shall be separately identified according to the paragraphs of the document requests to which they relate, or in the same order in which they were maintained during the ordinary course of your business. If not otherwise obvious, the file from which particular documents are taken shall be identified by file label or by the name of the individual who kept the file.

4. If responsive documents existed but have been destroyed, state the date of destruction and any pertinent policy which was followed in said destruction.

5. If you possess no documents to a paragraph of these document requests, state this fact in your response to the paragraph containing the document request.

6. If any documents are withheld based on any claim of privilege or for any other reason, provide a log identifying for each document the date, title, author(s), recipient(s), type of document, a brief summary of the contents and subject matter of the document, the document

request paragraph to which it is responsive, and the basis for the claim of privilege in sufficient detail so as to permit the court to adjudicate the validity of the claim. All such documents shall be marked, identified, held separately, and retained intact, subject to and pending a ruling by the court as to the claimed privilege.

III. Documents Requested

Please produce the following:

1. All form letters or other standardized correspondence constituting communications to members of Express Scripts' pharmacy benefit plans concerning:

- (a) the discontinuation, withdrawal or unavailability of TriCor capsules,
- (b) the availability of TriCor 54 mg or 160 mg tablets,
- (c) the discontinuation, withdrawal or unavailability of TriCor 54 mg or 160 mg tablets, or
- (d) the availability of TriCor 48 mg or 145 mg tablets.

2. All communications between or among Express Scripts and Defendants concerning

- (a) the discontinuation, withdrawal or unavailability of TriCor capsules,
- (b) the availability of TriCor 54 mg or 160 mg tablets,
- (c) the discontinuation, withdrawal or unavailability of TriCor 54 mg or 160 mg tablets,
- (d) the availability of TriCor 48 mg or 145 mg tablets or

(e) communicating information concerning (a) through (d), above, to members of Express Scripts pharmacy benefit plans.

3. All communications between Express Scripts, on the one hand, and any pharmaceutical company (including but not limited to Defendants), on the other hand, concerning TriCor or generic TriCor.

4. All agreements between Express Scripts, on the one hand, and any pharmaceutical company (including but not limited to Defendants), on the other hand, concerning TriCor or generic TriCor, and all communications between Express Scripts and any pharmaceutical company concerning such agreements.

5. All documents that reflect analysis or comparison(s) of any version(s) of TriCor.

CERTIFICATE OF SERVICE

I, A. Zachary Naylor, do hereby certify that on this 25th day of August, 2006, I caused copies of the Notice of Subpoena Duces Tecum to be served on the following counsel by electronic mail:

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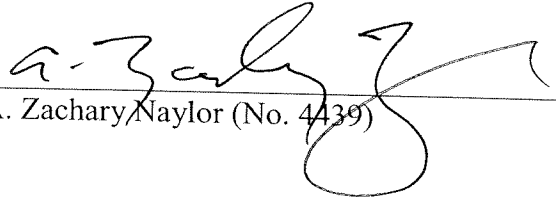
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